IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 126 (S/S) of 2002

1. Nishi Kumar S/o Sri Gordhan Singh, Clerk, Adarsh Junior High School, Manakpur- Adampur,
   District- Hardwar
2. Tilak Ram S/o Sri Babu Ram (Class IV Employees), Adarsh Junior High School, Manakpur- Adampur,
   District- Hardwar -------Petitioners

Versus

1. District Basic Education Officer, District- Hardwar
2. Accounts Officer, attached to the office of District Basic Education Officer, District- Hardwar
3. Committee of Management, Adarsh Junior High School, Manakpur-Adampur, District – Hardwar through it's Manager, Sir Net Ram

-------- Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri V.B.S. Negi, learned counsel for the petitioners and Sri Paresh Tripathi, learned Standing Counsel State of Uttarakhand for the respondent nos. 1 and 2. No one is present for respondent no. 3 though notices were issued to the respondent no. 3 after transfer of the case from Allahabad and the office report reveals that the notice has been served upon respondent no. 3.

By means of this writ petition, petitioners have prayed to quash the order dated 24.09.1992 passed by District Basic Education Officer, Hardwar, Annexure 11 to the writ petition, by which the District Basic Education Officer has refused to accord approval to the appointment of petitioner no. 1 as Class III employee and petitioner no. 2 as Class IV employee in Adarsh Junior High School, Manakpur-Adampur, District Hardwar.

The facts of the case, as narrated in the writ petition, are that there were vacancies of one post in Class III and one post in Class IV for which advertisement was issued by the Committee of Management, against which petitioners along with others applied. A Selection Committee was constituted and representative of the District Basic Education Officer was also present in the Selection Committee. The Selection Committee selected petitioner no. 1 for the post of Junior Assistant and petitioner no. 2 for the post of Peon. It appears from the record that the Selection Committee initially sent paper directly to the District Basic Education Officer, however, later on, on 28.07.1992, the Committee of Management also sent paper to the District Basic Education Officer for approval of petitioners. This fact is clear from Annexure No. 7 to the writ petition. Since the approval was not granted by the respondent, the Committee of Management provided appointment order to the petitioners taking benefit of Section 15 sub-section (5) (iii) of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules 1984.

Counter affidavit has been filed by the respondents. In para 4 of the counter affidavit, it is stated that the selection of the petitioners was not made in accordance in law.

In para 10 of the writ petition, petitioner has stated as under:-

> "That thereafter, the Manager of the institution, who had already prepared the letter, on 28.07.1992 sent the entire papers in regard to the selection to the District Basic Education Officer, Hardwar and the same was duly received by the Receiving Clerk at the office of District Basic

Education Officer, Hardwar on 05.08.1992. Photo copy of the letter dated 28.07.1992, which was duly received on 05.08.1992 at the office of District Basic Education Officer, Hardwar along with all necessary documents, is being filed herewith as Annexure '7' to this writ petition."

In reply to the para 10 of the writ petition, the respondents have answered in para 7 of the counter affidavit as under:-

"That the contents of paragraph 10 of the writ petition need no reply."

From perusal of para 4 of the counter affidavit, it reveals that the sole ground for refusing to accord approval was that the papers regarding appointment of petitioners were not sent by the Committee of Management and instead they were sent by the Selection Committee directly to the District Basic Education Officer, Hardwar. As stated earlier on 28.07.1992, the Committee of Management sent papers, which is clear from the Annexure No. 7, which was received on 05.08.1992 in the office of District Basic Education Officer and the District Basic Education Officer has refused approval on 26.08.1992.

In any case, the said refusal was on the basis that papers were not sent by the Committee of Management and were sent directly by the Selection Committee, the defect was curable and, in fact, the said papers were later on sent by the Committee of Management on 28.07.1992, which was received in the officer of District Basic Education Officer on 05.08.1992, which is clear from the Annexure No. 7 to the writ petition.

In these circumstances, I do not find any ground that the District Basic Education Officer was right to refuse approval to the petitioners on the post of Junior Clerk and Peon especially when the posts were advertised, Selection Committee was constituted validly and one of the member of the Selection Committee was a representative of District Basic Education Officer. After the defect which was already cured by the Committee of Management, the petitioners are already working on the basis of stay order granted by the Hon'ble Allahabad High Court in the year 1992. In these circumstances, I quash the order dated 26.08.1992 as well as 24.09.1992 passed by the District Basic Education Officer, Hardwar.

With these directions, the writ petition is finally disposed of. All the pending applications stand disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

13.06.2007
VKS